IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

TUESDAY, THE 12TH DECEMBER 2006 / 21ST AGRAHAYANA 1928

WP(C).No. 29052 of 2006(H)

PETITIONERS:

1. JOJI P.J., PARACKAL HOUSE,
   DEPOT MANAGER, PALAKKAD DISTRICT CO-OP. RUBBER
   MARKETING SOCIETY,
   KUMARAMPUTHUR P.O., KULAPPADAM,
   MANNARCAD, PALAKKAD.

2. BALACHANDRAN T.,
   THUNCHATH HOUSE,
   DEPOT MANAGER, PALAKKAD DISTRICT CO-OP. RUBBER
   MARKETING SOCIETY,
   KACHERIPARAMBU P.O., ALANALLUR,
   PALAKKAD.

BY ADV. SRI.P.N.PURUSHOTHAMA KAIMAL

RESPONDENTS:

1. THE PALAKKAD DISTRICT CO-OP. RUBBER
   MARKETING SOCIETY,
   REP. BY ITS SECRETARY,
   PALAKKAD DISTRICT-01.

2. THE JOINT REGISTRAR,
   CO-OP. SOCIETIES,
   PALAKKAD.

BY ADV. SRI.M.P.ASHOK KUMAR
BY GOVT. PLEADER SRI.P.K.RAVIKRISHNAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) 29052/2006

APPENDIX

PETITIONER'S EXTS:

EXT.P1 TRUE PHOTOCOPY OF THE APPOINTMENT ORDER OF THE PETITIONERS DATED 30.9.2005.

EXT.P2 TRUE PHOTOCOPY OF THE NOTIFICATION APPEARED IN MALAYALA MANORAMA DAILY DATED 8.8.2005.

EXT.P3 TRUE PHOTOCOPY OF THE CALL LETTER ISSUED TO THE SECOND PETITIONER DATED NIL.

EXT.P4 TRUE PHOTOCOPY OF THE DEPOSIT RECEIPT OF THE FIRST PETITIONER DATED 3.10.2005.

EXT.P5 TRUE PHOTOCOPY OF THE DEPOSIT RECEIPT OF THE SECOND PETITIONER DATED 3.10.2005.

EXT.P6 TRUE PHOTOCOPY OF THE NOTICE ISSUED BY THE FIRST RESPONDENT TO THE FIRST PETITIONER DATED 20.10.2006.

EXT.P7 TRUE PHOTOCOPY OF THE NOTICE ISSUED BY THE SECOND RESPONDENT TO THE SECOND PETITIONER DATED 20.10.2006.

EXT.P8 TRUE PHOTOCOPY OF THE REPLY SUBMITTED BY THE FIRST PETITIONER TO THE FIRST RESPONDENT 1.11.2006.

EXT.P9 TRUE PHOTOCOPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONERS TO THE SECOND RESPONDENT DT. 2.11.2006.

EXT.P10 TRUE PHOTOCOPY OF THE LETTER ISSUED BY THE SECOND RESPONDENT TO THE FIRST RESPONDENT DATED 12.10.2006.

EXT.P11 TRUE PHOTOCOPY OF THE APPEAL FILED IN MALAYALA MANORAMA DAILY DATED 24.11.2006.

EXT.P12 TRUE PHOTOCOPY OF THE ORDER ISSUED BY PRESIDENT O THE FIRST RESPONDENT TO THE FIRST PETITIONER DATED 6.11.2006.

EXT.P13 TRUE PHOTOCOPY OF THE ORDER ISSUED BY PRESIDENT OF THE FIRST RESPONDENT TO THE FIRST PETITIONER DATED 6.11.2006.

//TRUE COPY//

P.S. TO JUDGE.

J.M. JAMES, J.

W.P.(C) No. 29052 of 2006

Dated this the 12th December, 2006.

J U D G M E N T

The writ petitioners were appointed as Depot Managers under the first respondent, the Palakkad District Co-operative Rubber Marketing Society, on 30.9.2005. They were under probation for a period of one year. However, as per an order of the first respondent Society, their probation has been extended by three months, with effect from 3.10.2006. While so, Exts.P6 and P7 notices were issued on 20.10.2006 to the petitioners, directing them to show cause, why their services could not be terminated, as they are probationers, and their appointment through written test and interview were not regular, and they were also subjected to many accusations. The Joint Registrar (General), as per his order dated 12.10.2006, had passed an order according sanction to terminate the services of the writ petitioners under Rule 184(3) of the Kerala State Co-operative Societies Rules, 1969, in short 'the Rules'. Counsel for the writ petitioners submits that the same is under challenge before the Government, as an appeal, is pending. Mean while, the first respondent had issued orders terminating the services of the writ petitioners bringing into effect from

7.11.2006. Therefore, the writ petitioners are before this Court challenging the termination, as well as other orders passed against them. As per the amended writ petition, the writ petitioners challenge Exts.P6, P7, P10, P12 and P13.

2. I heard the arguments advanced by both sides. The learned counsel appearing for the writ petitioners submit that the application of Rule 184 of the Rules, and discharge of the petitioners from the services of the first respondent during their probation, without giving them a personal hearing, is against the principles of natural justice, and there was no reason given in the show cause notice as to the non-suitability of the services of the petitioners, so as to apply Rule 184(3) of the Rules. The counsel relied on **Purushothaman v. Registrar** (1996 (2) KLT 26) and **Poonjar Service Co-operative Bank Ltd. v. State of Kerala** (2004 (1) KLT Short Note case No.50 at page 40) to emphasis the above arguments.

3. The learned counsel appearing for the first respondent, however, contented that the appointment of writ petitioners were done by the then Secretary, as well as the other officials, with the connivance of a retired Joint Registrar, through irregular means. Therefore, with the permission of the Registrar, as

could be seen from Ext.R1(c), first respondent sanctioned the termination of the services of the probationers, the petitioners. There is no need to give a personal hearing, as they were not the permanent or regular employees. Counsel also relied on **Pritpal Singh v. State of Haryana and others** (1994 (5) SCC 695), **Biswa Ranjan v. Sushanta Kumar** (1996 (2) KLT Short Note Case No.55 at page 48) and **Krishan Yadav and Another v. State of Haryana and Others** (1994 (4) SCC 165), to emphasise the above points.

4. Petitioners were admittedly under probation. It is true that under Rule 184(3) of the Rules, the services of the probationers could be terminated, provided they are unsuitable. However, in **Pritpal Singh v. State of Haryana and others,** cited above, the Apex Court laid down the legal principle that, though from the selection records, even if there is no way, in which the men who committed the mal-practices could be identified, however, as the public interest outweighs their interest, their selection and appointments be quashed forwith.

5. The question whether the probationer whose service is to be discharged during the probation period, and whether he is to be heard, have come up for consideration in **Biswa Ranjan v.**

Sushanta Kumar, cited above. The Apex Court posed a query that when there were mal-practices, whether the notice is required to be issued to the affected persons, and whether they needed to be heard. The answer also was given by the Court, viz., nothing would come fruitful by issuance of notice.

6. In the instant case, there is an argument advanced by the counsel for the petitioners that they were not heard and opportunity was denied to them before terminating their services, after they had undergone a service of one year, under the first respondent, Society. It has been submitted before me by the counsel for the first respondent that the then Secretary, as well as the Joint Registrar (retired), who conducted the examination of all the five candidates, had destroyed the answer papers, and it is not known whether the examination of the writ petitioners and others were conducted according to Circular No.18/1991 dated 7.6.1991. Under Clause 4 of the above Circular, certain procedures had been prescribed in the recruitment of persons to the Co-operative Societies, as per the Acts and Rules. It is stipulated therein that the written test shall be conducted by an outside agency. False numbers should be assigned to the answer scripts. However, it was based on the complaints, that

the enquiries were conducted and mal-practices detected, on the appointment of the writ petitioners and three others. The matter accordingly remains that the examination was not conducted by an agency, as contemplated in Circular No.18/1991, and the retired Joint Registrar cannot constitute an agency. Neither the petitioners nor the respondents had produced any material before me to show the extent of the mal-practices committed in conducting the test and appointing the petitioners and three others. Nevertheless, the materials available show that Circular No.18/1991 had not been complied with, while conducting the examination and appointment of the petitioners to the post of Depot Managers.

7. The learned counsel appearing for the writ petitioners have relied on **Purushothaman v. Registrar** cited above, to emphasise the circumstances under which the Registrar can rescind a resolution regarding the appointment in a Bank under the Act, as well as the Rules. It is the submission of the counsel for the writ petitioners that none of the conditions stipulated and laid down in the above case had been followed by the Registrar before termination of the services of the probationers, the writ petitioners. Counsel emphasised that whenever a Registrar takes a decision under Rule 176

of the Rules to rescind a resolution passed by the Society giving appointment to a person, they should be heard before they are thrown out of the service.

8. In **Krishan Yadav and Another v. State of Haryana and Others,** cited above, giving an opportunity of being heard had been considered. However, the Court took the view that when the whole examination and interview conducted by the authorities turned out to be farcical exhibiting base character of those who have been responsible for such conduct, the principle on which persons who have been subjected to such fraudulent acts also cannot escape. It may be that those 96 candidates have served in the office for four years. However, the Apex Court held that the proper lesson would be given only if their appointments are set aside, teaching all of them that dishonesty could never pay. It is also further submitted that when the Registrar has given the prior sanction, as laid down in Rule 184 of the Rules, no further personal hearing is required.

9. I have gone through Rule 184 of the Rules. The proviso to Rule 184(3) of the Rules, lays down that there should be prior approval of the Registrar and a reasonable opportunity given to

the incumbents to show cause, against the action proposed to be taken against them. In the case at hand, the conditions contained in Rule 184(3) and proviso thereunder had been complied with.

10. It is true, as discussed in Krishan Yadav's case, cited above, that after serving for an year, the petitioners had been terminated from their service. But the counsel for the first respondent submitted that the then Secretary has been terminated from the service after a proper domestic enquiry. It is the actions and misleads of the then administration, including the Secretary who had been, later on, terminated, that had caused difficulties to the petitioners and three others. The procedure contained in Circular No.18/1991 is not proved to be followed by the then administration. Moreover, the writ petitioners have already been terminated. However, the counsel for the writ petitioners submit that the original orders of termination under Exts.P12 and P13 had not been served on them. The writ petitioners are at liberty to take up these contentions before the appropriate authorities, at the time, when they challenge Exts.P6, P7, P12 and P13.

11. In such a situation, the only remedy available for the petitioners, if they are so advised, is to approach the appropriate authorities under the relevant provisions of the Acts and Rules, challenging their dismissal. No orders can be passed setting aside or other wise interfering with Exts.P6 and P7 show cause notices, or Exts.P12 and P13 termination notices issued by the first respondent. Therefore, without prejudice to the right of the petitioners to agitate their grievances before the appropriate authorities, I close this writ petition, as no further orders need be passed in this writ petition.

J.M. JAMES,
JUDGE

nj.